

REMARKS/ARGUMENTS

Specification

The specification has been amended to recite the deposit number for pBHT1, the date of deposit and the complete name and full street address of the depository.

Status of the Claims

Upon entry of the present amendment, claims 91-101 are pending. Claims 95 and 96 are currently withdrawn. Claims 74-90 are cancelled with this amendment. Applicants specifically reserve the right to pursue the cancelled claims in one or more subsequent applications. Claim 98 is added with this amendment. Support for new claim 98 can be found, for example in claim 96 and on page 27, table 1. Support for new claims 99 and 100 can be found, for example at page 13, line 1- 3; page 57, paragraph 161; and, withdrawn claim 96. Support for claim 101 can be found, for example at page 43, paragraph 117 and in Example 5.

Interview

Applicants thank the Examiner for granting the in-person interview on March 26, 2010. Based on the interview, Applicants understand that claims 91-101 are in condition for allowance. Applicants submit three references, as discussed, relating to the DNA plasmids of the instant invention: Solvason, N. et al. *Journal of Immunology* **2008**, 181: 8298 – 8307 (DNA plasmids encoding self-proteins used in treating an animal model of type I diabetes); Robinson, W.H. et al. *Nature Biotechnology* **2003**, 21(9): 1033 – 1039 (DNA plasmids encoding self-proteins used in treating an animal model of multiple sclerosis) and Garren et al., *Ann Neurol* **2008**, 63:611-620 (results of a Phase 2 trial using plasmids encoding myelin basic protein for treatment of multiple sclerosis).

Rejections Under 35 U.S.C. §112, first paragraph

The Deposit

Claims 91 – 94 and 97 were rejected under 35 U.S.C. §112, first paragraph as failing to comply with the enablement requirement because it is allegedly not clear that the vector, pBHT1, was suitably deposited in a public repository. Applicants submit a declaration with this response indicating the deposit was made pursuant to the provisions of the Budapest Treaty and that all conditions of 37 CFR 1.801-1.809 have been met. As such the rejection under 35 U.S.C. §112, first paragraph should be withdrawn.

Written Description

Claims 74-81, 84-94 and 97 were rejected under 35 U.S.C. §112, first paragraph as failing to comply with the written description requirement as the claims contain subject matter which was allegedly not described in the specification. In particular, according to the Examiner, the pVAX vector from Invitrogen and SEQ ID NO: 297 may not be the same. While Applicants believe the claims comply with the written description requirement and that pVAX from Invitrogen and the SEQ ID NO: 297 are in fact the same, in order to further expedite prosecution of the instant application, Applicants have canceled claims 74 – 90.

Applicants respectfully submit that including claims 91-94 and 97 in this rejection is improper because these claims do not refer to SEQ ID NO: 297, but to the deposited vector pBHT1. As such cancellation of claims 74-90 should render this rejection moot. Withdrawal of the rejection is respectfully requested.

Election/Restriction/Withdrawn Claims

In response to a requirement for a species election (See Restriction Requirement mailed February 13, 2009), Applicants elected a self-protein associated with multiple sclerosis (MS). Because all rejections of the currently pending claims (claims 91 – 94 and 97) are overcome, these claims are now in condition for allowance. As indicated in the Restriction Requirement, upon allowance of a generic claim, such as current claim 91, Applicants are entitled to consideration of withdrawn claims 95 and 96, because they depend from and therefore

Appl. No. 10/524,643

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include all the limitations of the allowable generic claim, claim 91. Therefore, as provided by 37 CFR 1.141, Applicants respectfully request consideration of claims 95, 96 and 98-101.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested. If the a telephone conference would expedite prosecution of this application, the Examiner is invited to telephone the undersigned at 415-576-0200.

Respectfully submitted,

/Kevin Bastian/

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